IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16395 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHBHAI MOHANBHAI VASAVA

Versus

STATE OF GUJARAST

Appearance:

1. Special Civil Application No. 16395 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. Heard Mr.A.K.Pandya for Ms.K.U.Mishra, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the detention order dated 26.8.2003 (Annexure-A) passed under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") by respondent no.2 and prays for quashing and setting aside the said detention order and setting the petitioner at liberty.

3. The copy of the grounds of detention (Annexure-B) suggest that in Chhani Police Station, Baroda City, 5 cases under Section 379, 447 and 114 of the Indian Penal Code came to be registered against the petitioner on different dates in the month of July,2003. The grounds of detention also referred to the statements of two witnesses relating to the incident which allegedly occurred on 10.7.2003 and 19.7.2003. It is suggested that incident on 10.7.2003 and 19.7.2003 also pertained to alleged criminal offences by the petitioner. Thus, the petitioner is alleged to be a dangerous person. It is submitted by Mr.A.K.Pandya, learned advocate for the petitioner that the registered cases under the provisions of Indian Penal Code and also the incident relating to unregistered cases are directed against the individuals and that there is no question of breach of public order since the acts alleged would relate to law and order situation only, and that Section 3(1) of the PASA Act could not have been invoked looking to the cases against the petitioner.

4. On behalf of the petitioner reliance has been placed on the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 816. While dealing with Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985, the Division Bench held that, "four cases registered against the detenu under IPC, looking to the incident the cases fall under the maintenance of "Law and Order" and not "Public Order' and therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be legal or valid and the order of detention could have been passed on maintenance of "Public Order", detention order quashed".

5. The present case is squarely covered by the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) as the cases alleged against the petitioner are of theft of iron angles, gas pipe and electric motor etc.

6. In view of the above, the impugned detention order (Annexure-A) is liable to be quashed and set aside.

7. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 26.8.2003 (Annexure-A) passed by respondent no.2 against the petitioner -detenu -Maheshbhai Mohanbhai Vasava is hereby quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)